

1 DEPARTMENT OF INDUSTRIAL RELATIONS

2 STATE OF CALIFORNIA

3
4 DECISION ON ADMINISTRATIVE APPEAL IN RE:

5 Public Works Case No. 93-029

6 City of Big Bear Waterline Reconstruction Project
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9 I.

10 INTRODUCTION AND PROCEDURAL HISTORY

11 On June 18, 1993, the City of Big Bear Lake ("City"), a
12 charter city, requested a determination from the Department of
13 Industrial Relations as to whether a waterline reconstruction
14 project financed by a loan from the State of California is a
15 public works project under California prevailing wage laws. The
16 project includes work both within the City limits as well as in
17 unincorporated areas of the County outside the city limits. It
18 is funded under the California Water Conservation and Water
19 Quality Bond Law of 1986 (Cal. Water Code § 13450 et seq.)
20 ("Bond law"), which creates a Water Conservation and Ground
21 Water Recharge Account in the state treasury from which water
22 conservation and construction loans are made to qualifying local
23 agencies for eligible projects such as this. The Bond law and
24 applicable regulations set forth the purpose of the law, the
25 specific application requirements, and the financial and
26 technical feasibility requirements for the approval of a loan to
27 local agencies. The Bond law has no provision requiring the
28 payment of prevailing wages. The loan contract between the

1 State Department of Water Resources and the City sets forth the
2 specific description, the geographical scope, and the state
3 inspection, approval, maintenance and dispute resolution
4 requirements for the project.

5 On July 16, 1993, the Director of Industrial Relations
6 issued a public works coverage determination finding that,
7 although the waterline reconstruction project was a public
8 works, it was exempt from the payment of prevailing wages by
9 operation of the City's charter city status. On July 28, 1993,
10 the Southern California Labor/Management Operating Engineers
11 Contract Compliance organization ("Operating Engineers"), filed
12 an appeal of the determination. The Operating Engineers argued
13 that the charter city exemption is not available to the City
14 because the use of state funding takes the project outside the
15 scope of a municipal affair. On August 5, 1993, the City
16 responded to the appeal by referencing the July 16, 1993 advice
17 from the City attorney that there is nothing in the body of
18 state law which requires the payment of prevailing wages other
19 than the prevailing wage rates adopted by local ordinance. On
20 August 13, 1993, the City submitted further argument that
21 prevailing wages need not be paid because the City is a charter
22 city exempt from the obligation to pay prevailing wages on what
23 it contends is a project involving a municipal concern.

24 On February 10, 1994, counsel for this Department requested
25 the parties to address the issues whether the geographic
26 location and extent of state involvement in the project renders
27 it a matter of statewide concern and therefore not a municipal
28 affair subject to the charter city exemption. Operating

1 Engineers submitted argument that the project is not a municipal
2 affair because the work encompasses land both within and outside
3 the City, and because the state's involvement in the project is
4 substantial. The City took the position that the project is a
5 municipal affair because, even though it involves areas outside
6 the boundaries of the municipality, the extraterritorial areas
7 are necessary and integral to the municipal water system. The
8 City does not appear to dispute the state involvement in the
9 project, but argues that this Department was aware of the state
10 involvement before issuing the initial public works coverage
11 determination.

12 Subsequent to the submission of the parties' written
13 argument, a conference call between this Department's counsel
14 and all parties was held on May 17, 1994 to ascertain further
15 relevant facts concerning the project. Following this
16 conference call, the Department conducted further investigation.

17 Upon review of the record, and for the reasons set forth
18 below, the appeal is granted and the decision made that the
19 City's waterline reconstruction project is a public works
20 project subject to the payment of prevailing wages.

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2 II.

3 ISSUES TO BE DECIDED¹

4 Operating Engineers' Contentions on Appeal

5 A. The charter city exemption from the requirement to pay
6 state prevailing wages is not available to the City because the
7 use of state funding for the waterline reconstruction project
8 takes it outside the scope of a municipal affair.

9 B. The charter city exemption from the requirement to pay
10 state prevailing wages is not available to the City because,
11 pursuant to the Bond law, the state's exercise of a substantial
12 degree of control and its substantial involvement in the project
13 renders the project a matter of statewide concern.

14 C. The charter city exemption from the requirement to pay
15 state prevailing wages is not available to the City because the
16 extra territoriality of the project renders it a matter of
17 statewide concern.

18 Conclusions on Appeal

19 A. The characterization of the waterline reconstruction
20 project as a municipal affair is not defeated by the fact that
21 the source of funding for the project is a state loan.

22 B. The extent of statewide involvement and control,
23 pursuant to the Bond Law and applicable regulations, renders the
24 waterline project a matter of statewide concern.

25 ¹ Neither party disputes that this project is a public works project.
26 Under California Labor Code § 1720, a public works is defined as
27 "construction, alteration, or repair work done under contract and paid for
28 in whole or in part out of public funds." The waterline replacement work
at issue here involves construction, performed under contract, and is paid
for in whole or in part from public funds. Whether characterized as state
or municipal funds, the money utilized for the project constitutes public
funds.

1 C. In light of the finding that the extent of statewide
2 involvement and control removes the project from the purview of
3 a municipal affair, the issue whether the extra territoriality
4 renders the project a matter of statewide concern need not be
5 reached in this case.

6 III.

7 **FACTS**

8 A. The California Water Conservation and Water Quality Bond
9 Law of 1986.

10 In an effort to respond to the public health and safety,
11 environmental, and water conservation problems occasioned by a
12 network of leaky water lines, the City Department of Public
13 Works conceived a five-phase waterline replacement project for
14 the City of Big Bear Lake and its environs. The project is
15 funded by an approximately \$ 5 million state loan from the Water
16 Conservation and Groundwater Recharge Account established by the
17 1986 Bond law. Cal. Water Code § 13450 et seq. The regulations
18 governing the 1986 Bond law are contained in 23 California Code
19 of Regulations § 450.1 et seq.

20 In enacting Section 13451 of the Bond law, the Legislature
21 made the following findings and declarations:

22 (a) An abundant supply of clean water is
23 essential to the public health, safety, and
welfare.

24 (b) An abundant supply of clean water fosters
25 the beauty of California's environment, the
26 expansion of industry and agriculture,
maintains fish and wildlife, and supports
recreation.

27 (c) The state's growing population has
28 increasing needs for clean water supplies and
adequate treatment facilities.

1 (d) It is of paramount importance that the
2 water resources of the state be protected from
3 pollution and conserved, and that the
4 groundwater basins of the state be recharged
whenever possible to ensure continued
economic, community, and social growth.

5 (e) The chief cause of water pollution is the
6 discharge of inadequately treated waste into
the waters of the state.

7 (f) Local agencies have the primary
8 responsibility for the construction,
9 operation, and maintenance of facilities to
cleanse our waters, to conserve water, and
recharge groundwater basins.

10 (g) Rising costs of construction have pushed
11 the costs of constructing treatment facilities
12 and facilities to conserve water and recharge
groundwater basins beyond the ability of local
agencies to pay.

13 (h) Because water knows no political
14 boundaries, it is desirable for the state to
15 contribute to the construction of these
16 facilities in order to meet its obligations to
protect and promote the health, safety, and
welfare of its people and environment.

17 (i) Voluntary, cost-effective capital outlay
18 water conservation programs can help meet
growing demand for clean and abundant water
supplies.

19 (j) Recharge of groundwater basins is an
20 effective way to maximize availability of
scarce water supplies throughout the state.

21 (k) California's abundant streams, rivers,
22 bays, estuaries, and groundwater are
23 threatened with pollution from agricultural
24 drainage water which could threaten public
25 health and fish and wildlife resources and
26 impede economic and social growth if left
unchecked. Proper containment structures and
treatment facilities could provide for the
handling of agricultural drainage water in an
environmentally sensitive manner.

27 (l) (1) It is the intent of this chapter to
28 provide funds for the construction of cost-
effective containment structures and treatment

1 facilities for the treatment, storage and
2 disposal of agricultural drainage water.

3 (2) It is the further intent of this chapter
4 to provide funds for voluntary, cost-effective
capital outlay water conservation programs and
groundwater.

5 Section 13458, as well as the applicable regulations, set
6 forth the requirements and procedures under which a local agency
7 may acquire a loan for acquisition and construction of a water
8 conservation project. The local agency must submit an
9 application containing a description of the project with
10 illustrations or maps showing project features, and signed by a
11 registered engineer. The local agency must provide detailed
12 information regarding the proposed project, including: the
13 existing water supply problems, proposed solutions and critical
14 need; the statewide interest in the project; the engineering and
15 hydrogeologic feasibility; environmental documentation; the
16 relationship to any other area water management or land use
17 programs; the economic justification, total cost and completion
18 timetable; and, the local agency's financial status.

19 Under 23 CCR § 450.1 (p), "statewide interest" is defined
20 as the "extent to which a project protects public or private
21 property from damage, protects natural resources against loss or
22 waste or fosters their conservation and proper use, or produces
23 benefits that are disbursed generally throughout the community
24 area." According to the Department of Water Resources, in the
25 case of the City's loan application, as in almost all
26 applications for funding of water conservation projects, water
27 savings is the primary statewide interest involved.

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1 Before approving a loan, the Department of Water Resources
2 undertakes a two-prong review of the local agency's application.
3 The first prong is a determination as to financial eligibility,
4 that is, whether the agency can repay the loan. The second
5 prong is an analysis of the technical feasibility of the
6 project, for example, whether, under a cost benefit analysis,
7 the money expended on a waterline replacement project will
8 result in net water savings.

9 The loan contract between the Department of Water Resources
10 and the City sets forth the specific description, the
11 geographical scope, and the state inspection, approval,
12 maintenance and dispute resolution requirements for the project.

13 B. The Scope of the City's Waterline Replacement Project.

14 The City's waterline project involves work both within the
15 City limits, as well as in unincorporated areas outside the City
16 limits within the County of San Bernardino. Fifty-five percent
17 of the work is outside the City limits, with forty-five percent
18 within. Except for the preliminary phase², which took place in
19 1992 outside the City limits, each of the other four phases
20 includes work both within and outside the City limits. The work
21 for each phase was awarded under a separate contract or
22 contracts and, generally, more than one contract was awarded
23 within each phase.

24 Phase One, which began in May, 1993, and whose last notice
25 of completion was filed in November, 1993, included work mainly
26 outside the City limits in an unincorporated area of the County
27 called "Sugarloaf" and in a small area in the western part of

28 ² This phase is actually the first phase, with the remaining four phases
entitled Phases One through Four.

1 the City. Five contracts in the approximate amount of \$1,173,
2 546 were awarded for the work in this phase.

3 Eighty percent of the work in Phase Two encompassed work
4 within the City limits; the remaining twenty percent involved a
5 small portion of "Moon Ridge", an unincorporated area of the
6 County immediately adjacent to the eastern border of the City.
7 The construction in Phase Two commenced in August, 1993, with
8 the notice of completion filed in December, 1993. Two contracts
9 were awarded in the total approximate amount of \$1,028,474.

10 The work of Phase Three includes the central and eastern
11 areas of the City as well as "Erwin Lake" and "Fawnskin", both
12 of which are outside the City limits. The construction in this
13 phase began in January, 1994 and was projected to finish in
14 approximately August, 1994. Four contracts were awarded for
15 this work in the approximate total amount of \$ 887,280.

16 At the time of the Department's investigation, the City's
17 application was still pending for funding of the work planned
18 under Phase Four within the \$5 million loan. The City estimates
19 that the work, which involves contracts to be awarded in the
20 approximate amount of \$402,000, will be completed in October,
21 1994.

22 The City advises that state prevailing wages were paid for
23 approximately 56% of the total project work.

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1 IV.

2 DISCUSSION

3 A. The use of state loan funds does not by itself place the
4 waterline reconstruction project outside the scope of a
5 municipal affair.

6 The primary issue in this appeal is whether the City's
7 charter city status exempts it from prevailing wage obligations
8 on the waterline reconstruction public works project. Under
9 Article 11, § 5 of the California Constitution, a city "may make
10 and enforce all ordinances and regulations in respect to
11 municipal affairs, subject only to restrictions and limitations
12 provided in their several charters and in respect to other
13 matters they shall be subject to general laws." The City of Big
14 Bear has, by operation of Section 200 of its charter, availed
15 itself of the power to make and enforce all laws and regulations
16 with respect to municipal affairs. The City has also adopted by
17 local ordinance its own prevailing wage rates for City public
18 works projects.

19 It has long been settled that, insofar as a charter city
20 legislates with regard to municipal affairs, its charter
21 prevails over general state law. Sonoma County Organization of
22 Public Employees v. County of Sonoma, (1979) 23 Cal.3d 296, 315,
23 152 Cal.Rptr. 903, 914. The prevailing wage law, a general law,
24 does not apply to the public works projects of a charter city,
25 so long as the projects in question are within the realm of
26 "municipal affairs." City of Pasadena v. Charleville, (1934)
27 215 Cal. 384, 392, 10 P. 2d 745; Vial v. City of San Diego,
28 (1981) 122 Cal.App.3d 346, hearing denied September, 1981.

1 It is conceded that no exact definition of the term
2 "municipal affair" can be formulated and that judicial
3 determination is necessary on a case by case basis. Bishop v.
4 City of San Jose, (1969) 1 Cal.3d 56, 63, 81 Cal.Rptr. 465, 469.
5 In general, the term "municipal affair" is defined as a matter
6 which affects the local citizens rather than the people of the
7 state generally, whereas a matter of statewide concern extends
8 beyond the local interests at stake. 66 Ops.Cal.Atty.Gen. 266,
9 271-72. Generally, the furnishing and installation of municipal
10 water facilities are deemed to be municipal affairs. 45
11 Cal.Jur.3d § 110, p. 184;

12 In the instant case, the \$5 million funding for the
13 waterline replacement project derives entirely from a state loan
14 under the 1986 Bond law. Operating Engineers first argues that
15 the City cannot claim the charter city exemption from the
16 obligation to pay prevailing wages because the receipt of state
17 funds alone places the project outside the scope of a municipal
18 affair. This argument is without merit. In past public works
19 coverage determinations, this Department has consistently held
20 that loan funds take on the character of the recipient³. In
21 this case, the state funds loaned to the City pursuant to the
22 Bond law became municipal funds.

23 Accordingly, were there no other evidence that the project
24 is a matter of statewide concern, the project would be a purely
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27 ³ Towne Avenue Renewal Project, October 27, 1993; City of Santa Monica
28 Garcia Apartments Project, September 18, 1992; City of Santa Monica
Virginia Village Apartments, August 27, 1992; Neary Lagoon Cooperative,
Santa Cruz, November 27, 1991; Human Services Association Senior Center,
March 18, 1991.

1 municipal affair and exempt from the obligation to pay
2 prevailing wages.

3 B. As reflected in the Bond law, the applicable regulations,
4 and the contract between the City and the state, the extent
5 of state control and involvement renders the City's
6 waterline replacement project a matter of statewide concern
7 subject to the obligation to pay state prevailing wages.

8 As discussed above, the mere fact that a charter city's
9 public works project is funded by a non-municipal source does
10 not automatically take the project outside the purview of a
11 municipal affair. Generally, the construction and operation of
12 municipal water facilities with municipal funds and independent
13 of state or federal involvement and control are deemed to be
14 municipal affairs. Smith v. City of Riverside (1973) 34 C.A.3d
15 529, 110 Cal. Rptr. 67; Wehrle v. Board of Water and Power
16 Commissioners of the City of Los Angeles (1930) 211 C.70; Marin
17 Water and Power Company v. Town of Sausalito (1914) 168 C. 587;
18 City of South Pasadena v. Pasadena Land and Water Company (1908)
19 152 Cal. 579, 93 Pac.490. However, where the degree of control
20 and involvement of the outside funding entity is substantial,
21 the project may be deemed a matter of statewide concern to which
22 prevailing wage obligations will attach. In Southern California
23 Roads Co. v. McGuire, (1934) 2 C.2d 115, the California Supreme
24 Court reviewed whether a public works roadway construction
25 project through the charter city of Los Angeles, paid for by
26 state funds, and subject to state review and oversight, was
27 subject to the state prevailing obligations. In that case, the
28 court considered the following factors in determining whether
the project was a municipal affair subject to the charter city

1 exemption: (1) the source of the funds; (2) the nature and
2 geographic scope of the project; and, (3) the extent of state
3 involvement in the project. The Court found the project to be a
4 matter of statewide concern because it involved a secondary
5 state highway, was paid for by the state, and was subject to
6 state oversight.

7 In the instant case, the waterline project is funded by a
8 state Bond law which, in its declarations and findings,
9 references the specific, statewide purposes of the law. Those
10 purposes include the provision of a clean water supply essential
11 to the public health, safety and welfare; the protection of
12 state water resources from pollution; and, the conservation of
13 state water resources. In this case, the primary statewide
14 interest in funding the project is water conservation.

15 In addition, the Bond law and applicable regulations
16 provide that local agencies and the Department of Water
17 Resources must comply with specific procedures, requirements and
18 criteria for the application, approval and ongoing monitoring of
19 funded projects. The loan contract between the City and the
20 state which governs the funding of the waterline project
21 reflects a substantial level of state involvement in the
22 project, including the designation of a specific description of
23 the project (Section 1); review or approval of the plans,
24 specifications, and bid documents (Section 1); long term
25 operation and maintenance requirements (Section 8); a completion
26 deadline (Ex. A-6); water sale/transfer restrictions (Ex. A-11);
27 state inspection and access rights (Ex. A-14, 26); and, state
28 reservation of claims dispute resolution (Section 13, Ex. A-28).

1 Both the state and the City have complied and will continue to
2 comply with these procedures, requirements and criteria. The
3 City continues to submit to the State minutes of the City's
4 weekly meetings with project contractors and engineers.

5 Both the statewide interests expressed in the Bond law and
6 the degree of state control and involvement in this particular
7 project reflect that the project is not merely a local or
8 municipal affair of the City. It is a project in which the
9 state has a direct and vital interest. Accordingly, I find that
10 the waterline replacement project is a matter of statewide
11 concern subject to state prevailing wage obligations.

12 C. In light of the finding that the extent of statewide
13 involvement and control renders the project a matter of
14 statewide concern, the issue whether the extra
15 territoriality of the project takes it outside the purview
16 of a municipal affair need not be reached in this case.

17 Because the City Department of Water and Power provides
18 service to both the City and unincorporated areas outside the
19 City limits, the five-phase water reconstruction project
20 involves the geographical area of the City and six communities
21 outside the city limits in unincorporated areas of San
22 Bernardino County. Citing several cases, Operating Engineers
23 asserts on appeal that the City cannot claim the charter city
24 exemption from the requirement to pay state prevailing wages
25 because, where a project includes work on land both within and
26 outside a municipality, the project ceases to be a municipal
27 affair and becomes a matter of statewide concern. City of
28 Pasadena v. Chamberlain, (1928) 204 Cal. 653; Santa Barbara Etc.
Agency v. All Persons, (1957) 47 Cal.2d 699; City of Sacramento

1 v. Southgate Recreation and Park District, (1964) 230 Cal.App.2d
2 916, 41 Cal.Rptr. 452; City of Santa Clara v. Von Raesfeld,
3 (1970) 3 Cal.3d 239, 248, 90 Cal.Rptr. 8, 12; Wilson v. City of
4 San Bernardino, (1960) 186 Cal.App.2d 603, 611, 9 Cal.Rptr. 431,
5 436.

6 In support of its view that the extraterritoriality of the
7 project renders it a matter of statewide concern, Operating
8 Engineers argues that one of the purposes of the Bond law is to
9 fund projects which go beyond the boundaries of a municipality
10 to ensure clean water for the residents of both the municipality
11 and the entire state. It argues that the City water system is
12 just one link in a greater regional and statewide water system,
13 whose improvement has a positive effect on the entire water
14 system.

15 There is some support for the proposition that, where a
16 project affecting a municipality transcends that municipality's
17 boundaries to include other areas, both incorporated and
18 unincorporated, the project ceases to be a purely municipal
19 affair and becomes one that is instead governed by general law.
20 At the same time, courts construing the meaning of the term
21 "municipal affair", have found a municipal concern to exist
22 where the construction project appears to have taken place
23 outside the physical boundaries of a municipality. City of
24 Pasadena v. Charleville, supra, 215 Cal. at p. 392.

25 The City takes the position that the waterline project is a
26 municipal affair because its Department of Public Works is a
27 department of the City and that the extraterritorial areas
28 served are necessary and integral to the municipally authorized

1 and created water system. The City factually distinguishes
2 several of the cases which remove extraterritorial projects from
3 the purview of municipal affairs. It correctly notes that none
4 of those cases involve facts identical to the situation in this
5 case. In Von Raesfeld, Santa Clara was one of several cities
6 acting in concert to each contribute municipal funds toward the
7 improvement and expansion of inter-municipal water pollution
8 control facilities. The Wilson case involves a municipal water
9 district, created pursuant to state law, which provided for a
10 scheme of public improvements. McGuire involves the
11 construction of a secondary state highway. Here, the City of
12 Big Bear is acting alone as a municipality to replace water
13 lines within the jurisdiction of its Department of Public Works,
14 an entity created by amendment to the City Charter.

15 Whether the factual distinctions raised by the City cause
16 the Big Bear water line replacement project to be considered a
17 municipal affair, notwithstanding its extraterritorial scope,
18 need not be reached here, however. The case law is clear that
19 the extent of state control and involvement in the project, as
20 well as the obvious statewide concern of the Bond Law under
21 which the loan funds were obtained, are sufficient to take it
22 outside the scope of a municipal affair and correctly
23 characterize it as a matter of statewide concern.

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25 V.

26 CONCLUSION

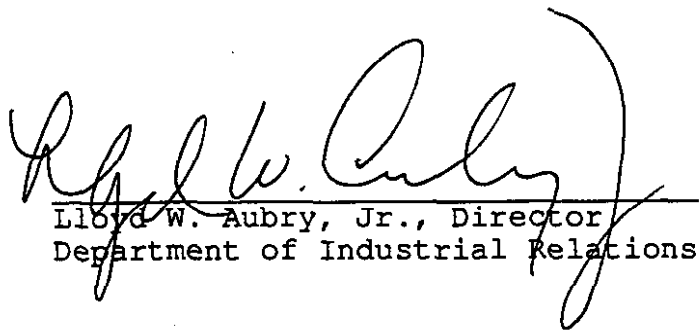
27 Upon reconsideration on appeal of my initial determination,
28 I find that the substantial state control and involvement in the

1 waterline reconstruction project of the City of Big Bear and the
2 Bond law requirement that a project's statewide interest be
3 demonstrated before funds will be loaned, removes the project
4 from the ambit of a purely municipal affair and renders it a
5 matter of statewide concern. Accordingly, the City is not
6 exempt from the payment of prevailing wages by virtue of its
7 charter city status and general state law prevailing wage
8 obligations attach.

9 We recognize that this reversal of the initial coverage
10 determination may impose a hardship on the City and its
11 contractors. The administrative appeal from coverage
12 determinations, however, is a process which exists so that the
13 Department may review its earlier analysis and conclusions.
14 Under the circumstances, while the Department cannot waive
15 enforcement of the requirement to pay prevailing wages on those
16 portions of the project for which the statute of limitations has
17 not run, it will not seek penalties against any of the parties.

18 Please be advised that this decision on administrative
19 appeal is subject only to judicial review by way of writ
20 pursuant to the Code of Civil Procedure.
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25 Dated: 10/21/94


Lloyd W. Aubry, Jr., Director
Department of Industrial Relations